

1 **(April 7, 2003)**

2 ***Disadvantaged Business Enterprise (DBE) Participation***

3 The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR part  
4 26 apply to this contract. The requirements of this contract are to report what is  
5 accomplished to enable the Contracting Agency to track achievement. No  
6 preference will be included in the evaluation of bids/proposals, no minimum  
7 level of DBE participation shall be required as a condition for receiving an  
8 award and bids/proposals will not be rejected or considered non-responsive on  
9 that basis.

10  
11 **DBE Goals**

12 No DBE goals have been assigned as a part of this contract.

13  
14 **Affirmative Efforts to Increase DBE Participation**

15 Contractors are encouraged to:

- 16  
17 1. Advertise opportunities for Subcontractors or suppliers in a  
18 manner reasonably designed to provide DBEs capable of  
19 performing the work with timely notice of such opportunities. All  
20 advertisements should include a provision encouraging  
21 participation by DBE firms and may be done through general  
22 advertisements (e.g., newspapers, journals, etc.) or by soliciting  
23 bids/proposals directly from DBEs.  
24  
25 2. Utilize the services of available minority community  
26 organizations, minority Contractor groups, local minority  
27 assistance offices and organizations that provide assistance in  
28 the recruitment and placement of DBEs and other small  
29 businesses.

30  
31 In addition, The Office of Minority and Women's Business  
32 Enterprises has three DBE Supportive Services Offices available  
33 to assist you as follows:

34  
35 Olympia: (360) 753-9693, (Fax) (360) 586-7079  
36 Seattle: (206) 553-7356, (Fax) (206) 553-0194  
37 Wenatchee: (509) 665-3528, (Fax) (509) 665-3533  
38

- 39 3. Establish delivery schedules, where requirements of the contract  
40 allow, that encourage participation by DBEs and other small  
41 businesses.  
42  
43 4. Achieve DBE attainment through joint ventures.

44  
45 **DBE Eligibility (for reporting purposes only)**

46 **Definition of DBEs**

47 DBE status is designated by:

48  
49 The current list of firms accepted as certified by the Office of  
50 Minority and Women's Business Enterprises (OMWBE.) A list of  
51 firms accepted as certified by OMWBE is available from that

office at (360) 704-1181 or on line through their web site at  
([www.omwbe.wa.gov/directory/directory.htm](http://www.omwbe.wa.gov/directory/directory.htm)).

### **DBE Participation**

When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted.

1. Count the entire amount of the portion of the contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract. Include supplies purchased or equipment leased by the DBE. Exclude supplies and equipment the DBE Subcontractor purchases or leases from the Contractor or its affiliate.
2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance, provided the fees are reasonable.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work shall be counted if the DBE's Subcontractor is also a DBE. The work that a DBE subcontracts to a non-DBE firm does not count as participation.

### **DBE Prime Contractor**

A DBE prime Contractor shall only count the work performed with its own forces as well as the work performed by DBE Subcontractors and DBE suppliers.

### **Joint Venture**

When a DBE performs as a participant in a joint venture, only count that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces.

### **Commercially Useful Function**

You may count expenditures to a DBE Contractor if the DBE is performing a commercially useful function on that contract.

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

3. A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its contract.

### **Trucking**

Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck that is used on the contract.
3. Credit towards project goals for DBE trucking firms who do not own at least one truck, will be granted only for the fees the DBE firm retains for providing the hauling service.
4. In order for DBE project goals to be credited, DBE trucking firms must be covered by a subcontract or a written agreement approved by WSDOT prior to performing their portion of the work.
5. DBE trucking firms are required to perform at least fifty percent (50%) of the work with his/her own trucks and personnel.
6. DBE trucking firms may utilize owner/operator trucks. The number of owner/operator trucks may not exceed any limitations on subletting or reassigning the work specified. All owner/operators must appear on the DBE Contractor's or DBE Subcontractor's payroll designated as owner/operator. The hours worked or wages paid may be reflected either on the payroll or on the record of payments to each owner/operator.
7. DBE trucking firms may lease or rent trucks from other sources, except from prime Contractors to whom they are Contractors, provided:
  - a) A written valid lease/rental agreement on all trucks leased or rented is submitted to the project manager prior to the beginning of work; and
  - b) Only the vehicle (not the operator) is leased or rented.
  - c) The agreement must include the lessors name, trucks to be leased, and agreed upon amount or method of payment (hour, ton or load hauled).

- 1 d) All lease agreements shall be long-term agreements,  
2 not project-by-project.  
3

4 The DBE is limited to leasing or renting two (2) additional trucks  
5 for each truck owned by the DBE trucking firm.  
6

7 **Expenditures with DBEs**

8 Expenditures with DBEs for materials or supplies shall be counted as  
9 provided in the following:  
10

11 **Manufacturer**

12 If the materials or supplies are obtained from a DBE manufacturer,  
13 count 100 percent of the cost of the materials or supplies.  
14

15 **Regular Dealer**

16 1. Counting

17 If the materials or supplies are purchased from a DBE regular  
18 dealer, count 60 percent of the cost of the materials or supplies.  
19

20 2. Definition

21 a) To be a regular dealer, the firm must be an established,  
22 regular business that engages, as its principal business and  
23 under its own name, in the purchase and sale or lease of the  
24 products in question.  
25

26 b) A person may be a regular dealer in such bulk items as  
27 petroleum products, steel, cement, gravel, stone, or asphalt  
28 without owning, operating, or maintaining a place of  
29 business, as provided elsewhere in this specification, if the  
30 person both owns and operates distribution equipment for  
31 the products. Any supplementing of regular dealers' own  
32 distribution equipment shall be by a long-term lease  
33 agreement and not on an ad hoc or contract-by-contract  
34 basis.  
35

36 c) Packagers, brokers, manufacturers' representatives, or other  
37 persons who arrange or expedite transactions are not  
38 regular dealers.  
39

40 **Purchased from a DBE**

41 With respect to materials or supplies purchased from a DBE who is neither  
42 a manufacturer nor a regular dealer, count the entire amount of fees or  
43 commissions charged for assistance in the procurement of the materials  
44 and supplies, or fees or transportation charges for the delivery of materials  
45 or supplies required on a job site, provided the fees are reasonable and  
46 typical for the services rendered. No part of the cost of the materials and  
47 supplies themselves shall be counted.  
48

49 **Procedures Between Award and Execution**

50 After award and prior to execution of the contract, the Contractor shall  
51 provide the names and addresses of all firms that submitted a bid or quote  
52 to the Contractor as part of bidding this contract and note which of those

1 firms were successful and will participate in the contract. These firms may  
2 be contacted to solicit general information as follows:

- 3
- 4 1. age of the firm
- 5
- 6 2. average of its gross annual receipts
- 7

8 This information is necessary to maintain a bidder's list in compliance with  
9 the requirements of the 49 CFR, Part 26. Simply stated: who is soliciting  
10 the work and what is their capacity? The Contracting Agency will use this  
11 information to accurately determine an overall goal based on the  
12 percentage of DBEs who are ready, willing and able to perform the work.

### 13 **Reporting**

14 The Contractor shall submit a "Quarterly Report of Amounts Credited as  
15 DBE Participation" on a quarterly basis for every quarter in which the  
16 contract is active (work is accomplished) or upon completion of the  
17 project, as appropriate. The quarterly reports are due on the 20th of April,  
18 July, October, and January for the four respective quarters. The dollars  
19 reported will be in accordance with the "**DBE Eligibility**" section of this  
20 specification.

### 21 **Payment**

22 Payment for complying with the conditions of this specification and any  
23 associated DBE requirements is the Contractor's responsibility. Those  
24 costs shall be incidental to the respective bid items.

### 25 **Further Information**

26 If further information is desired concerning Disadvantaged Business  
27 Enterprise participation, inquiry may be directed to:

28  
29 External Civil Rights Branch  
30 Office of Equal Opportunity  
31 Washington State Department of Transportation  
32 Transportation Bldg., P.O. Box 47314  
33 Olympia, WA 98504-7314  
34 or telephone - (360) 705-7085.  
35 Fax (360) 705-6801  
36  
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